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CITATIONS

CASES:

IN THE

Supreme Court of the United States

October Term, 1956

No. 56

PENNSYLVANIA RAILROAD COMPANY and BROTHERHOOD OF RAILROAD TRAINMEN, *Petitioners,*

v.

N. P. RYCHLIK, individually and on behalf of and as representative of other employees of the Pennsylvania Railroad, *Respondent.*

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

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BRIEF FOR PETITIONER BROTHERHOOD OF RAILROAD TRAINMEN

OPINIONS BELOW

The opinion of the United States District Court for the Western District of New York (R. 22-34) is reported at 128 F. Supp. 449. The opinion of the United States Court of Appeals for the Second Circuit (R. 39-44) is reported at 229 F. 2d 171.

JURISDICTION

The judgment of the Court of Appeals was entered on January 9, 1956 (R. 44). On April 4, 1956, a joint petition for certiorari was filed by the Brotherhood of Railroad Trainmen and the Pennsylvania Railroad Co. Certiorari was granted by this Court on May 14, 1956. 351 U.S. 930. The jurisdiction of this Court rests upon 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED

1. Does a District Court of the United States have jurisdiction to review the merits of a decision of a System Board of Adjustment, established under Section 3, Second of the Railway Labor Act, in a dispute arising under a union shop agreement solely because representatives of the labor organization representing employees of the carrier are members of such System Board and participate in such decision?

2. Does a District Court of the United States have jurisdiction to review the merits of the decision of a System Board of Adjustment that a labor organization is "national in scope" within the meaning of Section 2, Eleventh (c) of the Railway Labor Act, where Section 3, First (f) of the Railway Labor Act provides an available administrative procedure for final determination of such question, and where such labor organization has failed to follow such available administrative procedure for final determination of its status?

STATUTES INVOLVED

This case involves Section 2, Eleventh of the Railway Labor Act, as amended (45 U.S.C. § 152, Eleventh; 64 Stat. 1238), which permits railroads and the labor

organizations representing their employees to make union shop agreements. It also involves Section 3 of the Act (45 U.S.C. § 153; 48 Stat. 1189), which provides for the establishment of the National Railroad Adjustment Board, or in lieu thereof, of system, group or regional boards of adjustment, for the purpose of adjusting and deciding disputes between the railroads and their employees. These pertinent portions of the Act are set forth in the Appendix hereto, p. 36, *infra*.

STATEMENT

On January 28, 1955, respondent filed a complaint in the United States District Court for the Western District of New York against the petitioner Pennsylvania Railroad Co. and the petitioner-intervenor Brotherhood of Railroad Trainmen. Attached to the complaint were an affidavit by respondent's counsel and certain exhibits.

It was alleged that on March 26, 1952, the Pennsylvania and its employees represented by the Brotherhood entered into a union shop agreement, as permitted by Section 2, Eleventh of the Railway Labor Act (R. 7). This agreement provided that, as a condition of their continued employment, these employees must become members of the Brotherhood and maintain membership in good standing, except under specified circumstances (R. 12-13). The agreement also provided that the requirement of Brotherhood membership was not applicable to employees "who maintain membership in any one of the other labor organizations, national in scope, organized in accordance with the Railway Labor Act" (R. 13).

Having been a member of the Brotherhood in good standing, respondent resigned his membership in Feb-

ruary, 1953, and became a member of the United Railroad Operating Crafts (UROC), which he believed in good faith to be a railroad union national in scope (Affidavit, par. 3, R. 10). Respondent, together with other similarly situated employees, was then cited for non-compliance with the union shop agreement (Affidavit, par. 4, R. 10). He was given a hearing under the agreement before the System Board of Adjustment on or about August 27, 1953, but decision was postponed (Affidavit, par. 4, R. 10-11). Respondent joined the Switchmen's Union of North America, a union recognized to be national in scope, on July 31, 1954, and has been a member in good standing since that date (R. 5, 11). Evidence of that membership was presented at a further hearing before the System Board on August 23, 1954 (Affidavit, par. 5, R. 11).

The affidavit of counsel further alleged that on January 3, 1955, respondent received a letter from the System Board notifying him of the Board's decision that he had not complied with the union shop agreement and that membership in UROC does not constitute compliance with the agreement (Affidavit, par. 7, R. 11, 17). He received this letter "in spite of the fact that there had been no conclusive determination of the status of the said UROC, and despite the fact that administrative proceedings have been instituted by the said UROC to have itself recognized as national in scope" (Affidavit, par. 7, R. 11). On or about January 14, 1955, he was notified by the Pennsylvania that he was "out of service" (Affidavit, par. 8, R. 11), a notice that was later confirmed by letter (Affidavit, par. 10, R. 12). Unnamed fellow employees of respondent also received such notification of their discharge (Affidavit, par. 11, R. 12).

It was also alleged in the complaint that after respondent and his unnamed fellow employees had allowed their membership in the Brotherhood to lapse in 1953, they applied for reinstatement. This application was denied by the Brotherhood even though a tender of membership dues had been made. (R. 4, 6-7).

The complaint asked the District Court to restrain the Brotherhood and the Pennsylvania from continuing the discharge or suspension of respondent and his unnamed fellow employees until they have been given an opportunity for reinstatement or membership in the Brotherhood under the same terms or conditions available to other members (R. 8-9), and from enforcing the union shop to terminate their employment (R. 9). It was alleged that their discharge, following the Brotherhood's refusal to reinstate them, was contrary to Section 2, Eleventh (a) of the Railway Labor Act (R. 4-5). And since respondent was a member in good standing of the Switchmen's Union since July 31, 1954, his discharge was said to violate Section 2, Eleventh (c) of the Act (R. 5).

The complaint also charged that the union shop agreement was invalid under the Railway Labor Act in that (1) under the Act a System Board of Adjustment does not have jurisdiction over union shop disputes, (2) the Act and general principles of law are violated when the collective bargaining agent, the Brotherhood, is represented on the System Board, and (3) the provisions of the union shop agreement purporting to make the System Board's decisions final and binding are contrary to the Act (R. 7-8). The Brotherhood, in its representation on the Board, was said to be the "accuser, judge, and jury, in respect to the employees' right to work, all of which is in direct

conflict with settled principles of American jurisprudence" (R. 8).

The District Court, on petitioners' motion, dismissed the complaint for failure to state a cause of action (R. 34-36). In its opinion (R. 22-34; 128 F. Supp. 449), the court noted that the complaint was silent as to respondent's membership in UROC and as to the proceedings before the System Board and that no request had been made to review such proceedings. Such a review, even when requested, was held not to extend to the merits of the decision but only to the Board's procedure, the scope of the decision, and factors of fraud or corruption—all matters untouched by the complaint (R. 29). The court further held that the union shop agreement was valid and that representation of the collective bargaining agent on the System Board did not per se make the agreement invalid (R. 30). It was noted that the complaint contained no allegation of discrimination by a Board member.

The District Court further held that under the Act and the union shop agreement continued membership in a qualified union is a condition of continued employment. The Brotherhood's denial of reinstatement to respondent was held not to be a ground for judicial intervention (R. 31) and respondent's belated affiliation with the Switchmen's Union did not excuse his prior failure to maintain membership in a qualified union (R. 31-32).

Finally, the District Court held that the pleadings (including the affidavit and exhibits) made it unnecessary to determine the status of UROC and whether membership therein constituted compliance with the

union shop agreement. It was noted that determination of whether UROC was a union "national in scope" was left to specific administrative procedure under the Railway Labor Act (R. 33).

The Court of Appeals for the Second Circuit reversed the judgment of the District Court and remanded the case for trial on the merits. R. 39; 229 F. 2d 171. The Court of Appeals disregarded the District Court's holding that the complaint, considered by itself, made no reference to respondent's membership in UROC and contained no request for review of the System Board of Adjustment, thus stating no cause of action. The appellate court, apparently accepting all the additional facts set forth in the affidavit and exhibits accompanying the complaint, held that the System Board of Adjustment had jurisdiction over the matter under Section 3, First (i) of the Act as a dispute growing out of the interpretation or application of agreements concerning working conditions. But it held that the representation of the Brotherhood on the System Board made that Board's determination suspect because of the Brotherhood's presumptive bias against UROC, a competing union whose status as an organization "national in scope" was at issue. And it felt that this supposed bias was not remedied by a proceeding under Section 3, First (f) whereby a three-man board—composed of a representative of qualified unions, a representative of the union claiming to be "national in scope", and a third member chosen by the National Mediation Board—decides whether the applicant union is "national in scope" and hence is entitled to be an elector of unions representing employees in panels of the National Adjustment Board. Thus the District Court was held to have jurisdiction

to review the merits of the System Board's determination.

SUMMARY OF ARGUMENT

The court below erred in holding that the merits of a determination of the System Board of Adjustment could be judicially reviewed merely because of a supposed but unproved bias against the respondent by the Brotherhood members of the System Board on the issue of whether membership in a competing union constituted compliance with the union shop agreement. Such a ruling is at war with the whole pattern of the Railway Labor Act, wherein exclusive jurisdiction has been granted to administrative boards created under that Act to adjust disputes such as was involved here. The representation of union members on these administrative boards has long been a hallmark of the Act. Congress had sufficient faith in the honesty, integrity and objectivity of union representatives called to serve on these boards to sanction their inclusion and to fortify their decisions with a final and binding effect. Courts should not lightly overturn the trust that Congress has thus exhibited and permit judicial review on a mere presumption of bias, especially where bias is neither alleged nor proved.

The provisions of Section 3, First (f) of the Act afford an independent and exclusive administrative procedure for determining whether a union is national in scope. The System Board had no jurisdiction to decide that issue, thus eliminating any possibility of exhibiting "presumptive bias" against the respondent on this issue. While Section 2, Eleventh (c), the union shop provision, does not specifically refer to the procedure set forth in Section 3, First (f) for deter-

mining when a union is "national in scope", the identity of the standards involved in the two sections and various practical considerations dictate a meshing of these provisions.

Judicial review in this case would mean confusion and chaos on the issue of when a union is "national in scope" for purposes of the union shop requirement. A proper respect for the principles of the Act and a careful reading of the statutory provisions make plain an available, workable remedy within the framework of the Act that obviates the necessity of judicial review.

ARGUMENT

I. THE FACT THAT BROTHERHOOD REPRESENTATIVES CONSTITUTED HALF OF THE SYSTEM BOARD DID NOT DISQUALIFY THE SYSTEM BOARD OR RENDER ITS DETERMINATION SUBJECT TO JUDICIAL REVIEW.

The Court of Appeals below held that the System Board of Adjustment involved in this case was disqualified to render its determination that respondent's "membership in the United Railroad Operating Crafts does not constitute compliance with the Union Shop Agreement." R. 17-18. This disqualification was said to stem from the fact that two of the four members of the System Board were Brotherhood members. In holding that judicial review was necessary under these circumstances, the Court said of the composition of this System Board: "Nothing could more completely defeat the most elementary requirement of fair play; and nothing would more firmly entrench the recognized union in power; the temptation to fetch all jobs into that union would ordinarily be irresistible, especially when we remember that the union members of a 'System Board' are likely to be persons of consequence in the union itself." R. 43.

But such a ruling is at war with the whole pattern of the Railway Labor Act and the judicial interpretations rendered thereunder. From its origin in 1926, the Act has consistently provided for the establishment of boards of adjustment, with equal representation of the carrier and the employees, to decide disputes growing out of grievances or out of the interpretation and application of collective bargaining agreements.[1] Thus Section 3 of the original statute, 44 Stat. 578, made such provision. And the 1934 amendments to Section 3 established the National Railroad Adjustment Board, equally divided in membership between the carriers and labor organizations. 45 U.S.C. § 153, First. The 1934 amendments also preserved the right of the carriers and their employees to establish system, group or regional boards of adjustment with jurisdiction over these railroad labor disputes. 45 U.S.C. § 153, Second.

The System Board in this case arose out of the union shop agreement between the Brotherhood and the Pennsylvania, as authorized by Section 3, Second of the Act. 45 U.S.C. § 153, Second. The statute does not prescribe the form these system, group or regional boards must take. But following the general scheme of the Act, these boards usually are composed of equal numbers of carrier and union representatives. And so the System Board here was established with four members, two appointed by the Pennsylvania and two appointed by the Brotherhood (R. 15).

This System Board was created "for the sole purpose of handling and disposing of disputes arising

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[1] See Garrison, The National Railroad Adjustment Board: A Unique Administrative Agency, 46 Yale L. J. 567 (1937).

under this agreement" (R. 15), thus making an alternative method of adjusting and deciding disputes of the character that would otherwise go before the National Railroad Adjustment Board. Provision was made for a hearing and notice to the employee of the hearing, and it was agreed that the decisions of the System Board would be by majority vote and should be "final and binding" (R. 15).

As is convincingly demonstrated in the brief filed herein by the petitioner Pennsylvania Railroad Co. (pp. 13-21), the thirty-year history of these adjustment boards, with their equal divisions of membership, is one of general immunity from judicial review. Almost without exception the courts have held that the findings of such boards on the merits of the disputes are not subject to review or correction in the courts. Section 3 of the Act, as this Court has said, "represents a considered effort on the part of Congress to provide effective and desirable administrative remedies for adjustment of railroad-employee disputes growing out of the interpretation of existing agreements." *Slocum* v. *Delaware L. & W. R. Co.*, 339 U.S. 239, 243. And the jurisdiction of these administrative boards "to adjust grievances and disputes of the type here involved is exclusive." *Ibid.*, 244. See also *Order of Railway Conductors* v. *Pitney*, 326 U.S. 561, 567; *Colbert* v. *Brotherhood of Railroad Trainmen*, 206 F. 2d 9, 11-12 (C.A. 9), cert. den., 346 U.S. 931; *Bower* v. *Eastern Airlines, Inc.*, 214 F. 2d 623 (C.A. 3); *Farris* v. *Alaska Airlines, Inc.*, 113 F. Supp. 907 (D.C., Wash.).

The removal of these adjustment board determinations from the realm of judicial review reflects the general scheme of the Act to leave the resolution of rail-

road labor disputes to the private administrative techniques recognized by the statute. This Court has stated that "In view of the pattern of this legislation and its history the command of the Act should be explicit and the purpose to afford a judicial remedy plain before an obligation enforceable in the courts should be implied." *General Committee* v. *M-K-T R. Co.*, 320 U.S. 323, 337. To date no statutory command or legislative purpose has been found which would compel the acknowledgment of judicial review of the merits of system or adjustment board decisions, save for the provision of Section 3, First (p)—not here relevant—for the judicial enforcement of money awards of the National Railroad Adjustment Board.

But this general freedom from judicial supervision has not meant that system or adjustment boards are above or beyond the law. Courts have insisted that these administrative boards stay within their statutory and contractual jurisdiction, that their procedures be fair, and that their decisions be honest and free from fraud or corruption. See *Bower* v. *Eastern Airlines, Inc.*, 214 F. 2d 623 (C.A. 3); *Sigfried* v. *Pan American World Airways*, 230 F. 2d 13 (C.A. 5); *Farris* v. *Alaska Airlines, Inc.*, 113 F. Supp. 907 (D.C. Wash.). Judicial procedures have thus been made available to insure compliance with these general standards of fairness and statutory propriety.

But in these limited avenues of judicial review, the motivating element has been something other than the mere fact that half of the board membership was composed of union representatives. Such representation, one of the hallmarks of Railway Labor Act procedures, has not usually been thought to be so fraught with bias and prejudice against individual employees

as to justify the invocation of judicial review. See *United Railroad Operating Crafts* v. *Pennsylvania R. Co.*, 212 F. 2d 938, 942 (C.A. 7).

In only two instances have courts held that the inclusion of an equal number of union representatives on an adjustment board opened the door of judicial review. One was the decision of the Court of Appeals below. The other was the decision of the Court of Appeals for the District of Columbia in *Edwards* v. *Capital Airlines, Inc.*, 176 F. 2d 754. In the *Edwards* case, which dealt with a seniority dispute in which the union aggressively pressed the claims of its members adverse to the claims of the complainants, the court held that the System Board decision was not invalid per se and that it was entitled to presumptive weight of validity. But the award was held to be subject to judicial review since the union members on the Board could not be presumed to be impartial and protective of the rights of a non-member minority where the union was actively opposing the claims of that minority. In the instant case, however, the Court of Appeals did not attach any presumptive weight of validity to the System Board determination. It simply assumed bias from the presence of Brotherhood members on the System Board. And the resulting determination was thought to be so invalid as to justify a de novo judicial review of the merits of the dispute.

But the assumption that the union representatives on a System Board or any other adjustment board are necessarily biased against any claimant whose position is contrary to that of the union is not a realistic one. Congress must have known, in providing for and authorizing the inclusion of union representatives on the various adjustment boards, that these representa-

tives would be called upon to adjudicate claims which their unions contested.[2] Congress, in other words, had sufficient faith in the honesty, integrity and objectivity of union representatives called to serve on adjustment boards to sanction their inclusion and to fortify their decisions with a final and binding effect. Section 3, First (m). Courts should not lightly ignore the trust that Congress has thus exhibited.

The area in which Congress authorized the use of union representatives as adjustment board adjudicators of claims antagonistic to their unions is firmly established. The jurisdiction of these boards over disputes growing out of grievances or out of the interpretation or application of agreements is in no way limited. Clearly included, as acknowledged by the court below (R. 41), are union shop disputes such as is involved in the instant case. And a union shop dispute normally arises when an employee claims he has complied with the union shop agreement and the collective bargaining agent claims he has not. The union thereupon cites the employee for non-compliance, giving the employee the right to protest the citation before an adjustment board on which sit representatives of the union. The participation of these representatives in a case in which the union and the employee are in direct and real conflict thus becomes the intended and inevitable consequence of the statutory scheme of lodging the

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[2] By the same token, the members of the Brotherhood must be presumed to have known and to have acquiesced in the procedure established in the union shop agreement with the Pennsylvania whereby the System Board, with its two Brotherhood representatives, would adjudicate claims put forward by individual members which conflicted with the position of the Brotherhood. The respondent here was a member of the Brotherhood at the time this union shop agreement was made in 1952 (R. 7, 10)..

settlement of union shop disputes in the administrative boards established under Section 3.

Various other disputes arising under collectively bargained agreements can also bring the union into collision with the claims of an employee. The union may support the seniority rights of one group of employees under an agreement as opposed to another group, as occurred in *Edwards* v. *Capital Airlines, Inc.*, 176 F. 2d 755 (C.A.D.C.) and *Spires* v. *Southern R. Co.*, 204 F. 2d 453 (C.A. 4). Or the union may oppose a particular employee on some wage, hour or other working condition issue arising under the contract and coming within the jurisdiction of an adjustment board.

Thus if the employee's claim in these cases is denied, the rationale of the court below would permit him to obtain judicial review of the merits of the adjustment board ruling simply by pointing to the presence of union representatives on the board. There would be open to review issues which the courts have long held to be within the exclusive jurisdiction of the adjustment boards. A wide breach would then be made in the principle that the Railway Labor Act was designed to keep from the courts the function of reviewing the merits of administrative decisions dealing with labor disputes within the railroad industry.

At the same time, however, if the employee's claim in this type of case is sustained by the System Board, the union plainly would not have any right to judicial review based upon the composition of the administrative board. Thus the decision of the court below means in effect that the determinations of the System Board are "final and binding" only if they favor one party, the employee who differs with the union.

But it cannot be supposed that Congress had so little faith in the integrity of union representatives as to indicate a purpose that judicial review be available on the theory that the participation of these representatives automatically voided all their determinations on issues as to which the union differs with, and prevails over, the employee. As stated by the Court of Appeals for the Fourth Circuit in *Alabaugh* v. *Baltimore & Ohio R. Co.*, 222 F. 2d 861, 867:

> The argument that the Adjustment Board might not furnish a fair tribunal in cases of this character because certain members might be biased and prejudiced because of union affiliation furnishes no reason why the courts may ignore the fact that Congress has vested it with exclusive primary jurisdiction in such cases. *United Railroad Operating Crafts* v. *Pennsylvania R. Co.*, 212 F. 2d 938, 942-943 (C.A. 7). As said by Judge Conger in his opinion in the *United Railroad Operating Crafts* v. *Wyer, supra,* 115 F. Supp. 359, 365: "In view of the fact that I believe the Adjustment Board has jurisdiction, which the Supreme Court has said is exclusive, I am not certain whether there is room for concern over how plaintiffs will fare before the Board. And it is a fantastic thought that every employee who is discharged under a union shop agreement can run to Court about it."

See also *Colbert* v. *Brotherhood of Railroad Trainmen*, 206 F. 2d 9 (C.A. 9), cert, den., 346 U.S. 931; *Hayes* v. *Union Pacific R. Co.*, 184 F. 2d 337 (C.A. 9).

Carried to its logical extreme, the "presumptive bias" approach of the court below would jeopardize all System Board determinations of all controversies between parties to the agreement. By definition such

a controversy results from the strong conflicting positions they have taken with respect to the meaning or application of the agreement. It is, of course, these thus "biased" parties who compose the System Board created to resolve the controversy.

If an employee alleges or proves that the union representatives on an adjustment board were in fact biased and prejudiced against him personally to the extent of making it impossible for them to render a fair and impartial judgment, a judicially cognizable claim may have been stated. But merely noting the participation of such representatives and presuming their prejudice is to destroy a substantial part of the fabric of the Railway Labor Act. From its origin, the statute has been premised in part upon the utilization of union representatives in the administrative resolution of labor disputes. On that premise has grown the respect for these administrative rulings, a respect which the courts have consistently said obviated the necessity of judicial review. It is now too late in the day to rupture the whole pattern of the Act by a wholesale questioning of the integrity of union representatives.

The presumption of validity of the decision of this System Board should be retained. And in the absence of any allegation by respondent that the Brotherhood members of the Board were personally biased against him, that presumption must be maintained. To hold otherwise is to dispute the principle so long established that "the command of the Act should be explicit and the purpose to afford a judicial remedy plain before an obligation enforceable in the courts should be implied," *General Committee* v. *M-K-T R. Co.*, 320 U.S. 323, 337, and that "Congress intended

to go no further in its use of the processes of adjudication and litigation than the express provisions of the Act indicate." *Ibid.*, 333.

II. THE PROVISIONS OF SECTION 3, FIRST (i) OF THE ACT AFFORD AN INDEPENDENT AND EXCLUSIVE ADMINISTRATIVE PROCEDURE FOR DETERMINING WHETHER A UNION IS NATIONAL IN SCOPE FOR PURPOSES OF THE ACT.

A. The function of the System Board regarding the "national in scope" issue

The particular issue before the System Board of Adjustment in this case was whether the respondent had complied with the union shop agreement (R. 13) by maintaining membership in a union "national in scope" and "organized in accordance with the Railway Labor Act." This requirement arose from the provision of Section 2, Eleventh (c) that where a union shop prevails the union shop provision is satisfied if the employee holds membership "in any one of the labor organizations, national in scope, organized in accordance with this Act and admitting to membership employees" of the operating crafts.

It was assumed by the Court of Appeals below that the System Board actually determined the issue of whether UROC, the union here in question, was "national in scope." Such an assumption is not supported by the record. The System Board merely held that respondent's "membership in the United Railroad Operating Crafts does not constitute compliance with the Union Shop Agreement." R. 17-18. That such a determination did not involve a resolution of the status of UROC is aeknowledged by respondent in the affidavit accompanying his complaint (R. 11), where it is said that "in spite of the fact that there had been

no conclusive determination of the status of the said UROC, and despite the fact that administrative proceedings have been instituted by the said UROC to have itself recognized as national in scope," the respondent received the aforementioned ruling of the System Board.

Indeed, the question of whether UROC was in fact "national in scope" was not an issue over which the System Board had any discretionary jurisdiction.[3] That issue, as impliedly conceded by respondent in his reference (R. 11) to "the fact that administrative proceedings have been instituted by the said UROC to have itself recognized as national in scope," was one within the exclusive jurisdiction of the special three-man board established by Section 3, First (f). The function of the System Board in this connection was reduced to the perfunctory or ministerial one of determining whether UROC had been qualified as a union "national in scope" pursuant to the procedures set forth in Section 3, First (f). If UROC had not so qualified itself, the System Board had no discretion but to determine, as it did in this case, that membership in UROC does not constitute compliance with the union shop agreement. On the other hand, if UROC

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[3] Various courts have reasoned that "national in scope" was a matter of contract interpretation to be determined by the National Railway Adjustment Board or the various System Boards. See, for example, *United Railroad Operating Crafts* v. *Northern Pacific R. Co.*, 208 F. 2d 135 (C.A. 9); *Alabaugh* v. *Baltimore & Ohio R. Co.*, 222 F. 2d 861 (C.A. 4); *Johns* v. *Baltimore & Ohio R. Co.*, 118 F. Supp. 317 (N.D. Ill.), aff'd, 347 U.S. 964; *Bohnen* v. *Baltimore & O.C. Term R. Co.*, 125 F. Supp. 463 (N.D. Ind.). But it is submitted that such reasoning fails to give proper effect to the impact of Section 3, First (a) and (f) on Section 2, Eleventh (c) and the integrated pattern of procedure before the special three-man board that these sections reveal.

had been qualified in this manner, the System Board would have been compelled to recognize that the maintenance of membership in UROC, assuming proper proof thereof by respondent, satisfied the union shop requirement.

Hence there was no room for the Brotherhood members of the System Board to exercise any degree of discretion as to the "national in scope" issue or to exhibit or activate the bias and prejudice toward the respondent which the court below presumed to be in existence. Significantly, the respondent in his complaint made no claim that he was the victim of bias or prejudice on the part of Brotherhood members with respect to the "national in scope" issue.

B. The function of the three-man board regarding the "national in scope" issue

But even assuming that there might be some degree of bias or prejudice implied from the participation of the Brotherhood members on the System Board in this type of case, the availability of a completely independent three-man board, created pursuant to Section 3, First (f) for the express purpose of deciding the "national in scope" issue, protects the respondent from any possible harm.[4] In the words of the Court of Appeals for the Sixth Circuit in *Pigott* v. *Detroit, T. & I. R. Co.*, 221 F. 2d 736, 740,[5] employees like the respondent "are not denied due process of law where

[4] The availability of such an independent board to decide the issue of "national in scope" serves to distinguish this case from *Edwards v. Capital Airlines, Inc.*, 176 F. 2d 754 (C.A.D.C.), where there was no other agency available to decide the questions of seniority which the System Board had before it. The court below adopted the *Edwards* case as precedent for its decision. R. 43.

[5] Noted in 56 Col. L. Rev. 271 (1956).

there is the right to secure a fair determination whether their labor organization is 'national in scope' available to them, or, rather, to such labor organization, even though the administrative machinery for making such determination must be availed of in proceedings under the Act to qualify for the right to select members of the National Railroad Adjustment Board." See also *United Railroad Operating Crafts* v. *Pennsylvania R. Co.*, 212 F. 2d 938, 942 (C.A. 7).

The union shop provisions of Section 2, Eleventh (c) were enacted by Congress in 1951 as an amendment to the Act. And in referring to the holding of membership in other labor organizations "national in scope" and "organized in accordance with this Act", this amendment incorporated the identical qualifications set forth in Section 3, First (a) for union seeking to qualify for participation in the selection of labor representatives on the National Railroad Adjustment Board.[6]

Section 2, Eleventh (c), it is true, remains silent as to the manner in which these qualifications are to be determined for purposes of the union shop provision. In contrast, Section 3, First (f) provides a specific administrative procedure before a special three-man board for the precise purpose of determining whether a union is national in scope and organized in accordance with this Act so as to qualify under Section 3,

[6] The phrase "national in scope" also appears in the Railroad Retirement Act of 1937, 45 U.S.C. § 228a(a), and in the Railroad Unemployment Insurance Act, 45 U.S.C. § 351(a), both of which use it in referring to railway labor organizations. Under those laws, jurisdiction for determining "national in scope" status devolves upon the general counsel of the Railroad Retirement Board. Levinson, Union Shop Under the Railway Labor Act, 6 Lab. L. J. 441, 445 (1955).

First (a) for the selection of labor representatives on the National Railroad Adjustment Board.

Under the Section 3, First (f) procedure, if there is a dispute as to the qualifications of a labor organization as set forth in Section 3, First (a), the Secretary of Labor investigates the claim of the organization and if in his judgment the claim has merit he notifies the National Mediation Board. The Mediation Board thereupon establishes a special three-man board to decide the qualifications of the labor organization. The findings of this special three-man board are made "final and binding" by the terms of Section 3, First (f). No suggestion has been made that such a board would be biased or prejudiced against the labor organization seeking qualification or that the procedure before the board is not readily available to the labor organization.

The legislative history of the 1951 amendments to the Act, wherein the union shop provisions of Section 2, Eleventh (c) were adopted, contains no affirmative or definitive statements on the intention of the drafters of this provision as to how or by whom a union was to be qualified as "national in scope" for purposes of the union shop requirement.[7] It must be assumed,

[7] The language of Section 2, Eleventh (c) in question was not a part of the original union shop bill in Congress (S. 3295, 81st Cong.) and was not referred to in any of the accompanying reports (see S.R. 2262, 81st Cong., 2d Sess.). On September 23, 1950, however, Senator Hill offered an amendment on the floor of the Senate to the effect that no union shop agreement "shall require membership in more than one labor organization." 96 Cong. Rec. 15735. The purpose of this amendment was said to be to assure that an employee would not lose his job because of lack of membership in the union representing the craft or class in which he is located if he maintains his membership in the union representing the class or craft from which he has been transferred. But on December 7, 1950, Senator Hill offered a new amendment using

however, that they intended that the procedures of Section 3, First (f) be utilized for this purpose. Those procedures are consistent with the basic scheme of the Act for the settlement of labor issues through the administrative processes authorized by the statute, and there is no reason to suppose that the authors of Section 2, Eleventh (c) intended to do violence to that basic scheme.

In is significant that when Congress enacted the union shop amendments in 1951 it was adding to a statutory structure which had long been in existence. Thus the new Section 2, Eleventh (c), in its reference to unions "national in scope", was a mere adoption of the phrase that had been in use in Section 3, First (a) for nearly seventeen years. And that adoption took place with full knowledge of the existence of Section 3, First (f) and its settled and complete method of determining when a union was "national in scope." There was thus no reason for Congress to recreate an established administrative process. And there is even less reason to surmise that Congress intended to break completely with the past pattern and to authorize a wholesale invasion of the exclusive administrative processes by the judiciary.

The Court of Appeals below, however, failed to realize the complete intertwining of Section 2, Eleventh (c) and Section 3, First (a) and (f). It said (R. 42-43) that when a union seeks to qualify as an elector in a proceeding under Section 3, First (f) it must satisfy two conditions other than being "national in

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the language now appearing in Section 2, Eleventh (c). 96 Cong. Rec. 16260. It was said that the new amendment had the same intention and purpose as the prior amendment, but merely spelled out such intention and purpose in greater detail.

scope"—i.e., it must be "organized in accordance with" the Act and it must be "otherwise properly qualified to participate in the selection of the labor members" of the National Railway Adjustment Board. The union shop provision in Section 2, Eleventh (c), on the other hand, refers only to two conditions to be met by an alternative union; it must be "national in scope" and "organized in accordance with this Act."

But a careful reading of these various provisions reveals the identity of their standards. The reference in all of them to a union being organized in accordance with the Act, or Section 2 thereof, obviously means that the union must not be a company dominated organization (Section 2, Fourth). The last sentence of Section 3, First (f) speaks of a union being "otherwise qualified to participate in the selection of labor members." This plainly refers to qualifications, other than being properly organized, that are necessary for participation in selecting labor members of the Adjustment Board. And those qualifications are to be found only in Section 3, First (a). But the only other qualification mentioned in the latter section is that the union must be "national in scope". Hence there is complete identity of the standards or qualifications set forth in these three sections—the union must be "national in scope" and it must be "organized in accordance with the Act." See Note, 69 Harv. L. Rev. 1512, 1514. It is that identity that makes it appropriate to apply the procedures of Section 3, First (f) to the determination of the existence of the standards set forth in Section 2, Eleventh (c).

This statutory coordination of Section 2, Eleventh (c) and Section 3, First (a) and (f) is confirmed by several practical considerations:

(1) The determination of whether a union is "national in scope" for purposes of the union shop requirement under Section 2, Eleventh (c) is well suited to a single, authoritative determination under Section 3, First (f). The concept of "national in scope" is obviously one that should possess the same meaning and application whatever the particular context. It would be anomalous for a union to be considered "national in scope" for purposes of selecting labor representatives on the Adjustment Board, while not being considered "national in scope" for purposes of the union shop requirement, or vice versa. To insure uniformity of decision and to avoid the possibility of diverse interpretations and applications of the concept, a single authoritative body whose decisions are "final and binding" is most appropriate in the determination of this issue.[8] The special three-man board established by Section 3, First (f) is such an authoritative body.

(2) If the determination of whether a union is "national in scope" for union shop purposes were left

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[8] "A labor organization which is national in scope would be present in more than one jurisdiction and would have relationships with more than one carrier. If the question of its status were open to the courts, which are located in various areas of the nation, it is conceivable that such different jurisdictions would reach contrary conclusions if concurrent suits with separate carriers were to be litigated. During the delay while matters are being heard and pending the appellate resolution of possibly conflicting results, a serious element of doubt and confusion would be injected into an industry whose uninterrupted operation is essential to the national welfare. The creation of a single, central, competent agency which is itself national in scope and is thus capable of dealing with these problems that touch every state of the union, obviates this risk and makes possible a more speedy determination." *Pigott* v. *Detroit, T. & I. R. Co.*, 116 F. Supp. 949, 954 (E.D. Mich.), aff'd, 221 F. 2d 736 (C.A. 6).

to the various courts or to the various adjustment boards, not only would there be a variety of results but the burden of establishing the national status of the union would be placed on the individual complainant. In determining the "national in scope" status of a union, such criteria must be applied as the number and geographic dispersion of the union's members, the number of its lodges or locals, the number and geographic dispersion of the carriers with which it has agreements, the number of employees for whom it holds bargaining rights, the age of the union, the number of grievances it has processed before the National Railroad Adjustment Board, whether it has organizational affiliations with other unions, and the like. See Levinson, Union Shop Under the Railway Labor Act, 6 Lab. L.J. 441, 445 (1955).

These factors are obviously ones which are beyond the knowledge and the competence of any single individual as such. They are matters which pertain to the labor organization and which should be and must be proved by it. In many proceedings before adjustment boards and courts, however, the union will not be a party. If decision as to the "national in scope" status of the union is to be made by the Adjustment Board or court, the decision may well be reached without the benefit of the labor organization's views. Only the procedure established by Section 3, First (f) insures the participation by the union in the process of determining its status for union shop purposes.

(3) The concept of "national in scope" is peculiarly fitted to expert administrative determination under the Act rather than to the ordinary decisional techniques of judicial tribunals. As stated by Judge Levin in

Pigott v. *Detroit, T. & I. R. Co.*, 116 F. Supp. 949, 954 (E.D. Mich.), aff'd, 221 F. 2d 736 (C.A. 6):

> The history of the legislation, the peculiar characteristics of the type of labor organization concerned, the qualifications of other labor organizations already deemed to be qualified and the tensions existing as a result of inter union rivalry must all be taken into consideration. It is the type of issue which those that are conversant with the specialized problems of the railroad industry are most capable of evaluating.

Such a determination can best be made through the selection of an expert board pursuant to the provisions of Section 3, First (f),[9] a procedure that is consistent with the statutory policy of favoring administrative settlement of the unique problems in the railroad labor field. See *Slocum* v. *Delaware, L. & W. R. Co.*, 339 U.S. 239, 242-243.

(4) The special three-man board is so constituted under Section 3, First (f) as to eliminate any possibility of the "national in scope" issue being determined by an agency half composed of representatives of rival unions. In contrast to the usual system board, with half of its personnel affiliated with the collective bargaining agent, and the National Railway Adjust-

[9] "The determination of whether a union is 'national in scope' requires an extensive investigation by persons familiar with the railway labor field. The administrative personnel who would rule on a petition for membership in the NRAB are well acquainted with the factors that must be considered, and a determination by these experts involves a simple and inexpensive procedure. Furthermore, having analogous problems decided by one body promotes uniformity of decision and avoids needless litigation in the courts." Note, 56 Col. L. Rev. 271, 274 (1956).

ment Board, with half of its 36 members selected by the established unions, the three-man board is composed of one representative of the established unions, one representative of the claimant union, and a third or neutral party designated by the National Mediation Board. Thus this board is immune from any suggestion of partiality or unfairness in its make-up,[10] making it appropriate to conclude that this was the agency Congress intended to utilize in applying the standards of Section 2, Eleventh (c).

C. The misconceptions of the court below as to the three-man board procedure

The availability of the remedy afforded the claimant union through the machinery of Section 3, First (f) was said by the Court of Appeals below to be inadequate to protect the respondent's rights since he could not compel the union to apply for elector status (R. 43). But this criticism reflects a misconception as to respondent's rights, a mistaken notion that the respondent has the individual right to have adjudicated the "national in scope" status of the labor organization to which he belongs.

The concept of a union "national in scope" is one that adheres to the labor organization rather than to any member or individual. The "national in scope" language of Section 2, Eleventh (c) emphasizes the rights of a union "national in scope" to enlist em-

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[10] See *United Railroad Operating Crafts* v. *Pennsylvania R. Co.*, 212 F. 2d 943, 942 (C.A. 7), where the court indicated that the administrative machinery of Section 3, First (f) obviated any possible disadvantage to an employee growing out of any conflict of interest between UROC and the labor representatives on the National Railroad Adjustment Board. See also *Pigott* v. *Detroit, T. & I. R. Co.*, 221 F. 2d 736, 742 (C.A. 6).

ployees on the basis of its privileged statute and to insure them that membership therein satisfies the union shop requirement. This language, in terms of the rights of individuals, means only that they have the right not to be discharged if they belong to a union that has duly qualified itself as "national in scope." And, in order to acquire the privileged status of a union "national in scope," the union in question must qualify for and participate in the Adjustment Board machinery and be recognized there as a union "national in scope."

Thus the individual who desires to join a particular union and to retain his job under a union shop agreement must depend upon that union already possessing proper status under the Act. He joins the union at his peril.[11] He has no right to insist that the union thereafter qualify as one "national in scope" by applying for elector status under Section 3, First (a). His only right is that if he joins a union that has already so qualified he cannot be discharged under the union shop provision.

The "national in scope" concept, in other words, does not significantly refer to the rights of any individual. It is a concept that has meaning only with reference to a labor organization, a concept that can

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[11] "Plaintiffs voluntarily stopped paying dues to Brotherhood and terminated their membership therein, in order to join and be active in a rival union. Plaintiffs gambled heavily for a stake which must have seemed worth the risk to them at that time. By terminating their membership in Brotherhood and ceasing to pay dues to it, they made themselves subject to discharge by B & O under the terms of the union shop agreement, unless they could show that UROC was a labor organization which qualified under section 152 Eleventh (c)." *Alabaugh* v. *Baltimore & Ohio R. Co.*, 125 F. Supp. 401, 407 (D. Md.), aff'd, 222 F. 2d 861 (C.A. 4).

be activated only when that labor organization initiates proceedings under Section 3, First (f). If the union really wants to provide its members with job security under the union shop requirement, it will initiate those proceedings. The fact that no member or other individual can compel the union to invoke the proceedings is immaterial. If the union fails to seek qualification through the Section 3, First (f) procedure[12] it will thereby warn all employees in advance of the grave risk they take in joining a union that lacks elector status. See Note, 69 Harv. L. Rev. 1512 (1956). But the individual does not hereby lose any rights under the statute. He is merely put on notice that membership in such a union will not constitute compliance with the union shop requirement.

One result of imposing upon the union the obligation of utilizing the procedures of Section 3, First (f) if it desires "national in scope" status is to remove the possibility of a non-national union enjoying status under the Act without assuming "its fair share of the burdens and responsibilities attendant upon the administration of the Act." *Pigott* v. *Detroit, T. & I. R. Co.*, 116 F. Supp. 949, 955 (E. D. Mich.), aff'd, 221 F. 2d 736 (C.A. 6). Most of the financial cost of enforcing the Act and maintaining its administrative processes is borne by the qualified unions. That cost is reflected in the dues of each qualified union. Unless a union were obligated to participate in the Adjustment Board machinery before qualifying under the union

[12] "It seems probable that any union refusing to so petition would be motivated chiefly by expectation of certain refusal." Note, 56 Col. L. Rev. 271, 274 (1956). See *Brotherhood of Locomotive Engineers* v. *Chicago, B. & Q. R. Co.*, 116 N.R.A.B. (First Div.) 532; Levinson, Union Shop Under the Railway Labor Act, 6 Lab. L. J. 441, 446 (1955).

shop requirement, it might acquire an unfair advantage over the qualified unions by way of reduced dues.

The Court of Appeals below also felt (R. 43) that the three-man board constituted pursuant to Section 3, First (f) might not make a specific finding that a union is not national in scope and that it would then be impossible to know whether this was in fact its ground for refusing to qualify the union. A proceeding that might leave this issue undecided, said the court, "can hardly be intended as a remedy for any bias of the 'System Board.'"

Such statements again reflect the court's incomplete reading of the statute. The issue that would be presented to the three-man board is whether the union was qualified as an elector under Section 3, First (a).[13] As already noted, the two qualifications under that section are that the union must be "national in scope" and "organized in accordance with the provision of section 2 of this Act." Those are the identical qualifications under Section 2, Eleventh (c), the union shop section. Thus the determination of the three-man board must necessarily be in terms of one or both of these standards, either of which is decisive under the union shop provision. The suggestion that the board might not affirmatively rule on the "national in scope" issue cannot negate the fact that the only issues before the board and the only possible bases of its determination are matters that are conclusive of the union shop

[13] Section 3, First (f) says that the Board shall decide whether the union "was organized in accordance with section 2 hereof and is otherwise qualified to participate in the selection of the labor members of the Adjustment Board." The only other qualification for participating in such selection, of course, is that the union be "national in scope", as provided in Section 3, First (a).

qualification. Thus the board's ruling, regardless of whether it specifically mentions the "national in scope" issue, must of necessity be responsive to the issues posed by both Section 3, First (a) and Section 2, Eleventh (c).

Perhaps the most drastic effect of the lower court's decision is to impose on every union shop agreement in the railroad industry an ineluctable uncertainty as to its meaning. Under that decision the contracting parties are denied the elementary right to reach conclusive, mutual understanding of their own contract references to unions "national in scope." Instead, every effort to apply a union shop clause to an employee claiming membership in another union that is "national in scope"—no matter how thin or unfounded the claim—is subjected to the delays and uncertainties of judicial review and reversal. That such a result unnecessarily flouts the essential purpose and design of the statute is, we submit, self-evident.

Section 2 of the statute announces the purpose "to provide for the *prompt* and orderly settlement of *all disputes* growing out of . . . the interpretation or application of agreements . . ." (Emphasis supplied). Section 2, Second provides: "All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in *conference between representatives* designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute." (Emphasis supplied). See also Section 2, Sixth, and Section 3, First (i), which reiterate the duty to seek the negotiation of differences by conferences between authorized representatives. *Elgin, J. & E. R. Co.* v. *Burley*, 325 U.S. 711, 722.

But under the lower court's decision such conferences, like the more formal action of system boards, can make no definitive determination against the contention of an employee that he belongs to a union "national in scope". This means, of course, that the contracting union cannot effectively enforce its lawful union shop agreement by the prompt and orderly procedures prescribed by the statute. It means, inevitably, a multiplication of disputes threatening interruption to commerce rather than the diminution of such disputes contemplated by the statute, and it means delays in their settlement rather than the expedition expressly urged by the statute. Thus the court's reasoning ignores Congress' plain intent to have the Act serve as "an instrument of peace rather than of strife." *Texas & N.O.R. Co.* v. *Brotherhood of Railway Clerks,* 281 U.S. 548, 570. And it does so in the face of a simple and cohesive statutory plan of resolving the "national in scope" issue, a plan which would give the parties to the union shop agreement a definite means for applying the union shop requirement to those claiming membership in unions "national in scope". Under that plan the parties need only determine whether the organization in question has been qualified as of that time under the Section 3, First procedure.

When the orderly consequences of reading Section 2, Eleventh (c) in conjunction with Section 3, First (a) and (f) are compared with the disruptive confusion resulting from the statutory analysis adopted by the court below, the choice becomes unmistakable. An available, workable remedy within the framework of the Act is not lightly to be discarded, particularly at the expense of creating an unnecessary and chaotic

departure from the purposes and principles of the Act.

CONCLUSION

As this Court has said, the Railway Labor Act "represents a considered effort on the part of Congress to provide effective and desirable administrative remedies for adjustment of railroad-employee disputes growing out of the interpretation of existing agreements." *Slocum* v. *Delaware, L. & W. R. Co.*, 339 U.S. 239, 243. That effort is evident in the context of Section 2, Eleventh (c). Congress has provided an "effective and desirable" administrative remedy for the resolution of the "national in scope" issue, a remedy to be found in the procedure of Section 3, First (f). And a proper appreciation of the function of the system boards in connection with that issue makes plain that there is no "presumptive bias" on this issue arising from the participation of representatives of established unions in the system board determinations. The mere presence of such representatives is not enough to justify the invocation of judicial review.

It follows that there is no jurisdiction in a federal district court to review the merits of a system board determination of the type involved in this case. The judgment of the Court of Appeals below should therefore be reversed and the judgment of the District Court for the Western District of New York dis-

missing respondent's complaint for failure to state a cause of action should be reinstated and affirmed.

Respectfully submitted,

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APPENDIX

Relevant Statutory Provisions

Sections 2 and 3 of Title I of the Railway Labor Act, as amended (48 Stat. 1186, 1189, 64 Stat. 1238; 45 U. S. C. §§152, 153) provide in part as follows:

"Section 2. * * *

"Eleventh. Notwithstanding any other provisions of this Act, or of any other statute or law of the United States, or Territory thereof, or of any State, any carrier or carriers as defined in this Act and a labor organization or labor organizations duly designated and authorized to represent employees in accordance with the requirements of this Act shall be permitted—

"(a) to make agreements, requiring, as a condition of continued employment, that within sixty days following the beginning of such employment, or the effective date of such agreements, whichever is the later, all employees shall become members of the labor organization representing their craft or class: Provided, That no such agreement shall require such condition of employment with respect to employees to whom membership is not available upon the same terms and conditions as are generally applicable to any other members or with respect to employees to whom membership was denied or terminated for any reason other than the failure of the employee to tender the periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership.

"(b) to make agreements providing for the deduction by such carrier or carriers from the wages of its or their employees in a craft or class and payment to the labor organization representing the craft or class of such employees, of any periodic dues, initiation fees, and assessments (not including fines and penalties uniformly required

as a condition of acquiring or retaining membership: Provided, That no such agreement shall be effective with respect to any individual employee until he shall have furnished the employer with a written assignment to the labor organization of such membership dues, initiation fees, and assessments, which shall be revocable in writing after the expiration of one year or upon the termination date of the applicable collective agreement, whichever occurs sooner.

"(c) The requirement of membership in a labor organization in an agreement made pursuant to sub-paragraph (a) shall be satisfied, as to both a present or future employee in engine, train, yard, or hostling service, that is, an employee engaged in any of the services or capacities covered in section 3, First (h) of this Act defining the jurisdictional scope of the First Division of the National Railroad Adjustment Board, if said employee shall hold or acquire membership in any of the labor organizations, national in scope, organized in accordance with this Act and admitting to membership employees of a craft or class in any of said services; and no agreement made pursuant to subparagraph (b) shall provide for deductions from his wages for periodic dues, initiation fees, or assessments payable to any labor organization other than that in which he holds membership: Provided, however, That as to an employee in any of said services on a particular carrier at the effective date of any such agreement on a carrier, who is not a member of any one of the labor organizations, national in scope, organized in accordance with this Act and admitting to membership employees of a craft or class in any of said services such employee, as a condition of continuing his employment may be required to become a member of the organization representing the craft in which he is employed on the effective date of the first agreement applicable to him; Provided, further, That nothing herein or in any such agreement or agreements shall prevent an employee from changing membership from one organi-

zation to another organization admitting to membership employees of a craft or class in any of said services.

"(d) Any provisions in paragraphs Fourth and Fifth of section 2 of this Act in conflict herewith are to the extent of such conflict amended."

"SEC. 3. First. There is hereby established a Board, to be known as the 'National Railroad Adjustment Board' the members of which shall be selected within thirty days after approval of this Act, and it is hereby provided—

"(a) That the said Adjustment Board shall consist of thirty-six members, eighteen of whom shall be selected by the carriers and eighteen by such labor organizations of the employees, national in scope, as have been or may be organized in accordance with the provisions of section 2 of this Act.

"(b) The carriers, acting each through its board of directors or its receiver or receivers, trustee or trustees, or through an officer or officers designated for that purpose by such board, trustee or trustees, or receiver or receivers, shall prescribe the rules under which its representatives shall be selected and shall select the representatives of the carriers on the Adjustment Board and designate the division on which each such representative shall serve, but no carrier or system of carriers shall have more than one representative on any division of the Board.

"(c) The national labor organizations as defined in paragraph (a) of this section, acting each through the chief executive or other medium designated by the organization or association thereof shall prescribe the rules under which the labor members of the Adjustment Board shall be selected and shall select such members and designate the division on which each member shall serve; but no labor organization shall have more than one representative on any division of the Board.

"(d) In case of a permanent or temporary vacancy on the Adjustment Board, the vacancy shall be filled by selection in the same manner as in the original selection.

"(e) If either the carriers or the labor organizations of the employees fail to select and designate representatives to the Adjustment Board, as provided in paragraphs (b) and (c) of this section, respectively, within sixty days after the passage of this Act, in case of any original appointment to office of a member of the Adjustment Board, or in a case of vacancy in any such office within thirty days after such vacancy occurs, the Mediation Board shall thereupon directly make the appointment and shall select an individual associated in interest with the carriers or the group of labor organizations of employees, whichever he is to represent.

"(f) In the event a dispute arises as to the right of any national labor organization to participate as per paragraph (c) of this section in the selection and designation of the labor members of the Adjustment Board, the Secretary of Labor shall investigate the claim of such labor organization to participate, and if such claim in the judgment of the Secretary of Labor has merit, the Secretary shall notify the Mediation Board accordingly, and within ten days after receipt of such advice the Mediation Board shall request those national labor organizations duly qualified as per paragraph (c) of this section to participate in the selection and designation of the labor members of the Adjustment Board to select a representative. Such representatives, together with a representative likewise designated by the claimant, and a third or neutral party designated by the Mediation Board, constituting a board of three, shall within thirty days after the appointment of the neutral member investigate the claims of the labor organization desiring participation and decide whether or not it was organized in accordance with section 2 hereof and is otherwise properly qualified to participate in the selection

of the labor members of the Adjustment Board, and the findings of such boards of three shall be final and binding.

"(g) Each member of the Adjustment Board shall be compensated by the party or parties he is to represent. Each third or neutral party selected under the provisions of (f) of this section shall receive from the Mediation Board such compensation as the Mediation Board may fix, together with his necessary traveling expenses and expenses actually incurred for subsistence, or per diem allowance in lieu thereof, subject to the provisions of law applicable thereto, while serving as such third or neutral party.

"(h) The said Adjustment Board shall be composed of four divisions, whose proceedings shall be independent of one another, and the said divisions as well as the number of their members shall be as follows:

"First division: To have jurisdiction over disputes involving train-and yard-service employees of carriers; that is, engineers, firemen, hostlers, and outside hostler helpers, conductors, trainmen, and yard service employees. This division shall consist of ten members, five of whom shall be selected and designated by the carriers and five of whom shall be selected and designated by the national labor organizations of the employees.

"Second division: To have jurisdiction over disputes involving machinists, boilermakers, blacksmiths, sheet-metal workers, electrical workers, car men, the helpers and apprentices of all the foregoing, coach cleaners, power-house employees, and railroad-shop laborers. This division shall consist of ten members, five of whom shall be selected by the carriers and five by the national labor organizations of the employees.

"Third division: To have jurisdiction over disputes involving station, tower, and telegraph employees, train dispatchers, mantenance-of-way men, clerical employees,

freight handlers, express, station, and store employees, signal men, sleeping-car conductors, sleeping-car porters, and maids and dining-car employees. This division shall consist of ten members five of whom shall be selected by the carriers and five by the national labor organizations of employees.

"Fourth division: To have jurisdiction over disputes involving employees of carriers directly or indirectly engaged in transportation of passengers or property by water, and all other employees of carriers over which jurisdiction is not given to the first, second, and third divisions. This division shall consist of six members, three of whom shall be selected by the carriers and three by the national labor organizations of the employees.

"(i) The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes.

"(j) Parties may be heard either in person, by counsel, or by other representatives, as they may respectively elect, and the several divisions of the Adjustment Board shall give due notice of all hearings to the employee or employees and the carrier or carriers involved in any disputes submitted to them.

"(k) Any division of the Adjustment Board shall have authority to empower two or more of its members to con-

duct hearings and make findings upon disputes, when properly submitted, at any place designated by the division: Provided, however, That final awards as to any such dispute must be made by the entire division as hereinafter provided.

"(l) Upon failure of any division to agree upon an award because of a deadlock or inability to secure a majority vote of the division members, as provided in paragraph (n) of this section, then such division shall forthwith agree upon and select a neutral person, to be known as 'referee', to sit with the division as a member thereof and make an award. Should the division fail to agree upon and select a referee within ten days of the date of the deadlock or inability to secure a majority vote, then the division, or any member thereof, or the parties or either party to the dispute may certify that fact to the Mediation Board, which Board shall, within ten days from the date of receiving such certificate, select and name the referee to sit with the division as a member thereof and make an award. The Mediation Board should be bound by the same provisions in the appointment of these neutral referees as are provided elsewhere in this Act for the appointment of arbitrators and shall fix and pay the compensation of such referees.

"(m) The awards of the several divisions of the Adjustment Board shall be stated in writing. A copy of the awards shall be furnished to the representative parties to the controversy, and the awards shall be final and binding upon both parties to the dispute, except in so far as they shall contain a money award. In case a dispute arises involving an interpretation of the award the division of the Board upon request of either party shall interpret the award in the light of the dispute.

"(n) A majority vote of all members of the division of the Adjustment Board shall be competent to make an award with respect to any dispute submitted to it.

"(o) In case of an award by any division of the Adjustment Board in favor of petitioner, the division of the Board shall make an order, directed to the carrier, to make the award effective and, if the award includes a requirement for the payment of money, to pay the employee the sum of which he is entitled under the award on or before a day named.

"(p) If a carrier does not comply with an order of a division of the Adjustment Board within the time limit in such order, the petitioner, or any person for whose benefit such order was made, may file in the District Court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the carrier operates, a petition setting forth briefly the causes for which he claims relief, and the order of the division of the Adjustment Board in the premises. Such suit in the District Court of the United States shall proceed in all respects as other civil suits, except that on the trial of such suit the findings and order of the Adjustment Board shall be *prima facie* evidence of the facts therein stated, and except that the petitioner shall not be liable for costs in the district court nor for costs at any subsequent stage of the proceedings, unless they accrue upon his appeal, and such costs shall be paid out of the appropriation for the expenses of the courts of the United States. If the petitioner shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit. The district courts are empowered, under the rules of the court governing actions at law, to make such order and enter such judgment, by writ of mandamus or otherwise, as may be appropriate to enforce or set aside the order of the division of the Adjustment Board.

"(q) All actions at law based upon the provisions of this section shall be begun with two years from the time

the cause of action accrues under the award of the division of the Adjustment Board, and not after.

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"Second. Nothing in this section shall be construed to prevent any individual carrier, system, or group of carriers and any class or classes of its or their employees, all acting throught their representatives, selected in accordance with the provisions of this Act, form mutually agreeing to the establishment of system, group, or regional boards of adjustment for the purpose of adjusting and deciding disputes of the character specified in this section. In the event that either party to such a system, group, or regional board of adjustment is dissatisfied with such arrangement, it may upon ninety days' notice to the other party elect to come under the jurisdiction of the Adjustment Board."